IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO. 760 OF 2006

Mr. Kailashnath Chaturvedi & Anr. ... Petitioners.

V/s.

Dalsingar Damodar Singh Thakur & Ors. ... Respondents.

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Ms. Kumud Bhatia for the Petitioners.
Mr. Divesh Chamboowala for Respondent No.1.
Mr. V.T. Lulia For Respondent No.3.
Mr. S.B. Amin for Respondent No.4.
Mr. Pradeep Jadhav, A.G.P. for Respondent No.5.

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CORAM : DR. D.Y.CHANDRACHUD,J.

19TH January, 2007.

P.C. :

1. The Petitioners challenge in these proceedings the correctness of an order dated 4th May 2005 passed by the Maharashtra Slum (Improvement, Clearance and Re-Development) Tribunal. By the order of the Slum Tribunal, an Appeal filed in 2005 nearly 19 years, after a declaration of a slum was published on 19th December 1985, has been allowed. As a result, the declaration of the slum in respect of an area admeasuring 3404.05 sq.mtrs. comprising CTS 517 of Malad (East), Mumbai- 400097 has been set aside.

2. The principal challenge before the Court is that the First Respondent who had filed an Appeal before the Tribunal had no locus in the matter: He had conveyed the land which forms the subject matter of the dispute to the Petitioners by a registered deed of conveyance dated 29th October 1994 and a deed of rectification dated 9th April 1996. The deed of rectification had also been registered.

3. The First Respondent, as the Slum Tribunal notes in paragraph 2 of the order, had moved the Tribunal contending that he had constructed a Chawl on the plot of land bearing CTS 517 and that his name was recorded as the "Imla Malak" in the property register cards. Now, it is an undisputed position that a deed of conveyance had been executed on 29th October 1994. The deed of conveyance records that the subject matter of the agreement is land admeasuring 3404.05 sq.mtrs., the description whereof is to the following effect :-

> " All that piece and parcel of land admeasuring about 3404.05 sq.Mrs. with

structures lying and being at Dhaniwadi, Rani Sati Marg, Malad (East), Taluka Borivli, Bombay 400 097, bearing Survey No.284 (pt) Hissa No.1 corresponding to C.T.S.No.502 (pt) and 517 (pt) within the limits of 'p' Ward Municipal Corporation bunded by :

C.T.S.No.502 and 517 towards North
C.T.S.No.502 towards South
C.T.S.No.502 towards East and
C.T.S.No.502 towards West."

4. Subsequently, a deed of rectification was entered into between the parties on 9th April 1996 by which the area that forms the subject matter of the conveyance was modified to 3300 sq. yrds. equivalent to 2759.23 sq.mtrs. The First Respondent has instituted, in September 2004, a suit on the Original Side of this Court, seeking a declaration that the deed of conveyance was obtained on the basis of a misrepresentation, in violation of the terms contained in the earlier agreement of sale and that it was fraudulent and was consequently liable to be set aside. An injunction was sought against the Defendant to the Suit from acting upon the deed of conveyance. Neither has any motion been taken out in the suit for the grant of interim relief nor consequently does any interim order operate in the suit. The

position therefore as it stands today on the basis of the registered documents which hold the field is that the First Respondent stands divested of all his rights in respect of the land that forms the subject matter of the dispute. That position would not stand altered unless the suit is decreed. In this context, it needs to be reiterated that the First Respondent had moved the Slum Tribunal on the basis that he was the owner of the structure standing on the land and it was in that capacity that he was aggrieved by the slum declaration. The Tribunal was persuaded to set aside the declaration of the slum in an appeal filed by the First Respondent 19 years after the declaration was published in the official gazette on 19th December 1985. The Petitioners who were directly concerned with the outcome of the proceedings were not impleaded as parties. The First Respondent was aware of the interest of the Petitioners in the property. In the meantime, on 6th May 2005, a letter of intent had been issued by the Slum Rehabilitation Authority to the Developers and to the Society formed of Slum Dwellers for carrying out a slum redevelopment project under Development

Control Regulation 33 (10). 143 slum dwellers are to be rehabilitated under the slum redevelopment scheme. A copy of the letter of intent is placed on the record at Exhibit 'I' to the Petition. An I.O.D. has since been issued.

5. Despite these circumstances, the First Respondent did not inform the Slum Tribunal of the fact that such interest which he claimed in the premises was divested by a registered deed of conveyance and by a registered deed of rectification. On behalf of the First Respondent, an effort has been made to demonstrate before the Court that there are discrepancies between the agreement to sell and the deed of conveyance. This Court in the exercise of the writ jurisdiction under Article 226 would not be justified in pursuing this line of enquiry, particularly when a suit instituted by the First Respondent is pending, in which no application for the grant of interim relief has been made.

6. In these circumstances, the order of the Slum Tribunal dated 4th May 2005 will have to be quashed and set aside and is accordingly, quashed and set aside. However, it is clarified that this shall not preclude the First Respondent from seeking appropriate relief in the suit filed on the Original Side of this Court.

7. The Petition is accordingly allowed in these terms. There will be no order as to costs.